

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications Act)	
of 1996)	
)	
Interconnection between Local Exchange)	CC Docket No. 95-185
Carriers and Commercial Mobile Radio)	
Service Providers)	DOCKET FILE COPY ORIGINAL
)	
Area Code Relief Plan for Dallas and)	
Houston, Ordered by the Public Utility)	NSD File No. 96-8
Commission of Texas)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan)	
)	
Proposed 708 Relief Plan and 630)	
Numbering Plan Area Code by Ameritech-)	IAD File No. 94-102
Illinois)	
)	

To: The Commission

**OPPOSITION OF COX COMMUNICATIONS, INC.
TO PETITIONS FOR RECONSIDERATION**

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits this opposition to petitions for reconsideration in the above-referenced proceeding.^{1/} Cox files this opposition to respond to (1) petitions that seek to eliminate the minimal safeguards that the Commission adopted for implementation of area code overlay and (2) petitions that seek to require carriers that are not incumbent local exchange carriers ("LECs") to provide notification of network

^{1/} See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Second Report and Order and Memorandum Opinion and Order*, Dkt. Nos. CC 96-98, CC 95-185, NSD File No.96-8, CC 92-237 and IAD File No. 94-103, FCC 96-333, rel. August 8, 1996 (the "*Second Report and Order*").

changes to other carriers. These petitions should be denied. They would lead to anticompetitive consequences and would violate Congressional intent when it adopted the 1996 Act.^{2/}

I. The Commission Should Require More, Not Fewer, Safeguards Before An Area Code Overlay Can Be Implemented.

Several parties seek to weaken the competitive safeguards required under the *Second Report and Order* before an area code overlay can be used to relieve the exhaust of an existing area code.^{3/} These parties seek to eliminate each of the safeguards adopted by the Commission. As shown below, these safeguards cannot be discarded and, as described in the petitions of Cox and other parties, actually are not sufficient by themselves to prevent anticompetitive effects of overlays.

Some petitioners argue that the Commission should not require the assignment of at least one NXX code from the existing area code to each carrier before an overlay is implemented. These petitioners claim that requiring such assignments will accelerate exhaust and potentially could preclude adoption of overlays.^{4/} There are several significant flaws in these claims.

First, overlays will be precluded by the condition of assigning NXX codes to all carriers only if there is insufficient planning for area code exhaust. If, as mandated by

^{2/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (the “1996 Act”).

^{3/} See, e.g., Petition of NYNEX at 11-12 (10-digit dialing should not be required); Petition of BellSouth at 8 (assignments of NXX codes from existing area code should not be required).

^{4/} See, e.g., Petition of AirTouch at 16-20; Petition of BellSouth at 8.

industry guidelines, relief planning begins well before exhaust is projected to occur, then there should be ample time to implement an overlay while assigning NXX codes as required by the Commission's rules.^{5/}

Second, if there are not enough NXX codes to assign one to each carrier, then it is inappropriate to implement an overlay because there will be no way to ameliorate the anticompetitive effects of the overlay on new entrants and other rapidly-growing carriers.^{6/} The petitioners who would eliminate this requirement do not address this problem. In fact, they fail to recognize the anticompetitive impact of an overlay, despite the findings made by the Commission and many state regulators. It is not, however, possible to wish these effects — and the need for safeguards — away.

The petitioners that seek to eliminate the 10-digit dialing requirement also fail to recognize the anticompetitive effects of overlays.^{7/} NYNEX argues that the overlay of the 917 area code in New York City demonstrates that 10-digit dialing is unnecessary, but that experience is not relevant to the all-services overlays mandated by the Commission's area code relief policies. Unlike an all-services overlay, the 917 overlay applies only to a limited number of services. More important, when the 917 overlay was introduced, there was no

^{5/} Indeed, one of the advantages claimed by advocates of overlays is that they can be implemented more rapidly than area code splits, which should make it easier to set aside the required NXX codes, not harder.

^{6/} As several parties describe in their petitions, in practice the assignment of a single NXX code to each entity affected by an overlay is not sufficient to overcome the anticompetitive effects of the overlay. A single NXX will not suffice, for instance, if a carrier is growing rapidly or if it is necessary to obtain multiple NXX codes to create distinct local calling areas within an area code. *See* Petition of Cox at 2; Petition of AT&T at 5-7; Petition of MFS at 3-6; Petition of Teleport Communications Group, Inc. at 4.

^{7/} *See* Petition of NYNEX at 13-15; Petition of New York Public Service Commission at 5-10.

immediate prospect of competition, so no carrier was subjected to a competitive disadvantage by being forced to take numbers from the new area code. Moreover, most NYNEX customers rarely deal with the 917 area code, because it is not used for regular residential and business telephone lines. Thus, the 917 overlay has very little potential for the kinds of customer confusion that are likely if an all-services overlay is implemented.

In sum, there are no grounds for eliminating any of the safeguards the Commission adopted in the *Second Report and Order*. Rather, given the acknowledged anticompetitive effects of overlays, the Commission should adopt the additional safeguards proposed in the petitions filed by Cox, AT&T, MFS and Teleport.

II. The Commission Should Not Impose Network Modification Notice Requirements on Carriers that Are Not Incumbent LECs.

NYNEX and SBC Corp. ask the Commission to modify its network modification rules to extend new notice requirements to carriers other than incumbent LECs.^{8/} The Commission should deny these petitions as contrary to Congressional intent.

As Cox previously has described, the 1996 Act created specific sets of obligations for specific categories of telecommunications carriers.^{9/} Telecommunications carriers, the broadest group, have the fewest obligations. LECs have additional obligations, including the obligations to provide reciprocal compensation for transport and termination and to provide

^{8/} Petition of NYNEX at 8-9; Petition of SBC Corp. at 14-16.

^{9/} See, e.g., Cox Reply Comments, CC Docket No. 96-98, filed May 30, 1996, at 40.

number portability.^{10/} Incumbent LECs have the most obligations, including the obligation to provide notification of network changes.^{11/}

As the Commission held in the *First Report and Order* in this proceeding, the distinctions among types of carriers have meaning and should be enforced.^{12/} Congress created these distinctions intentionally, because of the differing characteristics of each category of carrier. In particular, Congress recognized that incumbent LECs have market power and both the incentive and the ability to take steps to limit the success of other carriers in the marketplace. One way an incumbent could exercise that power is by making unilateral changes to its network that affect the interoperability and financial viability of other, competitive networks. Competitive carriers, on the other hand, do not have the power to hurt incumbent LECs. Given this imbalance, the Congressional decision to impose network notification requirements on incumbent LECs and not other carriers is eminently reasonable and should not be overturned.

While NYNEX and SBC argue that it is important for them to receive notice of changes in other networks, they provide no reason to believe that carriers without market power have any incentive not to provide notice. In practice, it is unlikely that any competitor will make a change in its network that makes it difficult to interoperate with an incumbent LEC. It is even less likely that a competitor would choose not to notify all of its

^{10/} 47 U.S.C. § 251(b).

^{11/} 47 U.S.C. § 251(c)(5).

^{12/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, CC Dkt. Nos. 96-98 and 95-185, FCC 96-325, rel. August 8, 1996.

interconnecting carriers of the change, if for no other reason than to assure that its own customers would be able to reach the more numerous customers of other networks. This is not the case for incumbent LECs because the impact of being unable to interoperate with other carriers is much less significant for a carrier with 99 percent market share. Thus, while there is a strong basis for requiring incumbent LECs to provide notice of changes to their networks, there is no reason to overturn the Congressional determination that such a requirement need not be imposed on carriers that are not incumbent LECs.

III. Conclusion

For all these reasons, Cox Communications, Inc., respectfully requests that the Commission adopt policies and rules that are consistent with this opposition.

Respectfully submitted,

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November 20, 1996

CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 20th day of November, 1996, I caused copies of the foregoing "Opposition of Cox Communications, Inc. to Petition for Reconsideration" to be served via U.S. first-class mail, postage prepaid, or via hand delivery where indicated, to the following:

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